

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

ISMAEL ARENAS-GONZALEZ,)	
)	
Petitioner,)	
v.)	Civil Action
)	No. 09-3306-CV-S-RED-H
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Petitioner, an inmate formerly confined in the United States Medical Center for Federal Prisoners, petitions this Court for a writ of habeas corpus in which he challenges his mental health commitment. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636(b). Because petitioner's claims are not properly before this Court, it will be recommended that he be denied leave to proceed in forma pauperis.

As grounds for relief in habeas corpus, petitioner contends that he has does not have a mental disease or defect, and because he is now sane, he is entitled to be released. After a Show Cause Order was entered, the United States filed its response, and petitioner filed a *pro se* traverse. Counsel for petitioner thereafter filed a Motion to Withdraw.

A review of the record indicates that petitioner was temporarily confined at the Medical Center after having been committed pursuant to 18 U.S.C. § 4241(d) by the United States District Court, District of Colorado. According the files and records in this case, on January 11, 2010, a status conference set for January 25, 2010, in the District of Colorado was continued by that court,

pending petitioner's transfer back to Colorado from his current place of incarceration in Oklahoma City.

The law is clear that any challenges petitioner is attempting to raise regarding his commitment should be brought in the Colorado court. Petitioner's effort to collaterally attack the validity of his commitment under §4241(d) to restore his competency to stand trial involves unique legal issues, which should be determined by the committing court in Colorado. See Archuleta v. Hedrick, 365 F.3d 644, 649 (8th Cir. 2004).

Because this Court lacks jurisdiction of petitioner's claims, it must be recommended that the petition for habeas corpus relief be dismissed without prejudice.

Counsel for the petitioner has filed a Motion to Withdraw. Because there are no issues presented for which relief is appropriate, the motion is granted.¹

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 22 of the United States District Court for the Western District of Missouri,

RECOMMENDED that petitioner be denied leave to proceed in forma pauperis, and that the petition for a writ of habeas corpus be dismissed without prejudice.

/s/ James C. England
JAMES C. ENGLAND
United States Magistrate
Judge

Date: 2/3/10

¹ Petitioner has 10 days to file exceptions to the Report and Recommendation of the United States Magistrate Judge.